

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Appeal From Order no.1120 of 2005
with
Civil Application No.1138 of 2005

Office Notes, Office Court or Judge's Order
Memorandum of Coram
appearance, Court's
Orders & Directors
and Registrar's Order

Mr Pravin Samdani i/b M/s Kishore
Thakurdas & Co for appellants
Mr. D.H.Mehta Sr Counsel with
D.A.Joseph, Dipika Biswas i/b
M/s David & Associates for respondent
no.1

CORAM; A.M.KHANWILKAR J.

DATED 24.1.2006

P.C.

. This appeal from order takes exception to the order passed by the City Civil Court Bombay dated 11.8.2005 rejecting notice of motion taken out by the appellants for dispossessing the plaintiff (defendant no.1 in counter claim). The court below has rightly found that the plaintiff-defendant no.1 in counter claim has already been in possession

of the premises and pending adjudication of the issues raised by the parties, he cannot be dispossessed. To my mind, the relief sought by the appellants is of mandatory nature and the circumstances set out by the appellants are not sufficient to invoke such remedy. Accordingly, this appeal should fail.

. However, I am in agreement with the submissions canvassed by the appellants that as the structure in respect of which the plaintiff-defendant no.1 in the counter claim, claims to be the occupant, is in a dilapidated condition, it is appropriate that the suit and the counter claim be decided expeditiously. The learned counsel submits that the trial court has already framed issues on 3.9.2005. Accordingly, the trial court may be well advised to dispose of the suit and the counter claim as expeditiously as possible as High Court expedited matter.

. All questions including the proceedings taken out for setting aside the counter claim are left open.

. Civil Application is disposed of accordingly.